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Honorable Timothy W. Dore
Chapter 11
Hearing Location : Rm. 8106
Hearing Date: September 23, 2016
Hearing Time: 9:30 a.m.
Response Date: September 16, 2016

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8 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 In re:

11 CONSOLIDATED MERIDIAN FUNDS, a/k/a
MERIDIAN INVESTORS TRUST, et al.,
12
13 Debtors.¹

Case No. 10-17952
(Substantively Consolidated)

**LIQUIDATING TRUSTEE'S
MOTION TO CLOSE
BANKRUPTCY CASE AND
ENTER FINAL DECREE**

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16 **I. INTRODUCTION**

17 Mark Calvert, the Liquidating Trustee of the Meridian Investors Trust for the
18 Substantively Consolidated Meridian Funds a/k/a the Meridian Investors Trust (“Meridian
19 Investors Trust”) in Case No. 10-17952, submits the following Motion to Close Bankruptcy Case
20 and Enter Final Decree (the “Motion”). The Liquidating Trustee relies upon, and hereby
21

22 ¹ The Debtors are Meridian Mortgage Investors Fund V, LLC (Case No: 10-17952); Meridian Mortgage Investors
23 Fund II, LLC (Case No. 10-17976); Meridian Mortgage Investors Fund VII, LLC (Case No: 10-17953); Meridian
24 Mortgage Investors Fund VIII, LLC (Case No. 10-17958); Meridian Mortgage Investors Fund VI, LLC (Case No:
25 10-18729); Meridian Mortgage Investors Fund IX, LLC (Case No. 10-18727); Meridian Mortgage Investors Fund
26 X, LLC (Case No: 10-18728); Meridian Real Estate Opportunity Fund I, LLC (Case No: 10-19645); Meridian Real
Estate Opportunity Fund II, LLC (Case No: 10-19644); Meridian Mortgage Investors Fund I, LLC (Case No: 11-
10830); Meridian Mortgage Investors Fund III, LLC (Case No: 11-10833); and MPM Investor Services Inc. (Case
No: 11-10834). Pursuant to the Plan confirmation order entered June 22, 2011, the Cases have been substantively
consolidated and Mark Calvert is the Liquidating Trustee.

incorporates by reference, the Declaration of Mark Calvert filed in Support of Liquidating Trustee's Motion to Extend Duration of Meridian Investors Trust (Dkt. No. 1221).

II. FACTUAL BACKGROUND

Frederick Darren Berg ("Berg") operated a massive Ponzi scheme by and through over thirty different affiliated entities owned and controlled by Berg including the Meridian Funds. The Meridian Funds offered and sold promissory notes ("Notes") to investors. On July 9, 2010, involuntary bankruptcy petitions were filed by certain creditors of four of the investment funds, individually and collectively referred to here as the Meridian Funds.² On July 20, 2010, this Court entered an order appointing Mark Calvert as the Trustee of those Meridian Funds. In the months that followed, eight related entities filed voluntary bankruptcy petitions.³ More than 1500 claims totaling in excess of \$225 million were filed in the Meridian Funds' bankruptcy proceedings. The large majority of claims were filed by investors in the Meridian Funds who loaned money to, or invested money in, the Funds ("Investors").

A. Creation of the Meridian Investors Trust.

On June 22, 2011, the bankruptcy cases of the Meridian Funds were substantively consolidated pursuant to the order confirming the Chapter 11 Trustee's and Official Consolidated Investors' Committee's Joint Plan of Liquidation (the "Plan").⁴ See Dkt. No. 427. The Plan also created the Liquidating Trust and approved the Liquidating Trust Agreement. Mark Calvert was named as the Liquidating Trustee of the Meridian Investors Trust. Under the Plan and Liquidating Trust Agreement, all assets of the Meridian Bankruptcy were transferred to the

² The order for relief was entered on July 29, 2010 for Meridian Mortgage Investor Fund II, Meridian Mortgage Investor Fund V, Meridian Mortgage Investor Fund VII, and Meridian Mortgage Investor Fund III. See Dkt. No. 69.

³ Voluntary petitions were filed on behalf of Meridian Mortgage Investor Fund VI, Meridian Mortgage Investor Fund IX, and Meridian Mortgage Investor Fund 10 on July 28, 2010. Orders for relief for those entities were entered on the same date. Those cases were filed under Case Nos. 10-18729, 10-18728, and 10-18727.

⁴ This Motion refers to the consolidated bankruptcy proceedings as the "Meridian Bankruptcy."

1 Meridian Investors Trust for the benefit of its Beneficiaries—defined as creditors of the Meridian
2 Bankruptcy holding allowed claims.^{5, 6} The Meridian Investors Trust has an initial term of (5)
3 years after the Effective Date of the Plan—which was July 7, 2011. *See* Dkt. No. 473. The term
4 of the Meridian Investors Trust was extended an additional five years to July 7, 2021 by order of
5 this Court on June 28, 2016 (Dkt. No. 1229).

6 B. Administration of the Meridian Investors Trust to Date.

7 The assets of the Meridian Investor Trust include the following: various causes of action
8 against Investors in the Meridian Funds for avoidance and recovery of fictitious interest and/or
9 fraudulent transfers; causes of action against non-investor third parties primarily for avoidance
10 and recovery of fraudulent transfers; and loan and vacant land parcel portfolios that were held by
11 the Meridian Funds. As explained herein, the Liquidating Trustee has administered a substantial
12 portion of trust assets for the benefit of the Trust’s beneficiaries and resolved the vast majority of
13 its causes of action. The Liquidating Trustee has also made substantial interim distributions to
14 beneficiaries of the Trust since confirmation of the Plan.

15 In 2012, the Liquidating Trustee identified 186 investors against whom the Trust held
16 potential fraudulent transfer claims for either recovery of fictitious interest/profit on their
17 investments in the Meridian Funds, or for recovery of their principal investment based on lack of
18 good faith. The Liquidating Trustee also sued third parties who were the recipients of fraudulent
19 transfers but who were not Investors in the Meridian Funds. Over the course of the next two
20 years, the overwhelming majority of those cases settled or were otherwise resolved. The
21 Liquidating Trustee’s resolution of these settled or resolved cases resulted in a recovery of
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23 ⁵ Beneficiaries are defined in Section 1.1(d) of the Liquidating Trust Agreement as holders of Allowed
24 Administrative Claims, Allowed Priority Tax Claims, and Allowed Claims in Classes 1, 2, and 3.

25 ⁶ The Plan also constitutes a compromise among the bankruptcy estates of the Meridian Funds and those investors
26 who accepted the Plan by voting in favor of the Plan and agreeing to the terms of the compromise in timely
submitted documentation acceptable to the Plan Proponents (“Electing Investors”). The compromise is referred to as
the “Plan Global Investor Settlement.”

1 approximately \$5,285,000, for beneficiaries of the Meridian Investors Trust.

2 With respect to the claims against non-investor defendants, the Liquidating Trustee
3 identified eleven different defendants against whom the Trust held claims. The Liquidating
4 Trustee settled his claims against two of the defendants before filing suit, and sued the remaining
5 nine defendants. Eight of the lawsuits against third-party non-investor defendants settled or were
6 otherwise resolved, resulting in a recovery of approximately \$15 million (excluding the Moss
7 Adams settlement). The Liquidating Trustee resolved the Trust's claims against Moss Adams
8 LLP—the auditor of certain of the Meridian Funds in 2016. The settlement reached by the
9 Liquidating Trustee, the amount of which is confidential, resulted in the single largest recovery
10 for beneficiaries of the Liquidating Trust to date. The Liquidating Trustee now believes that the
11 ultimate dividend to beneficiaries of the Liquidating Trust will be approximately 25%.

12 Only one lawsuit commenced by the Liquidating Trustee remains unresolved. That case
13 was conducted under the jurisdiction of the United States District Court for the Western District
14 of Washington. The Liquidating Trustee's suit against Dr. George Steven Kooshian that
15 proceeded to trial before U.S. District Judge Richard A. Jones in October 2014. *See In re Mark*
16 *Calvert*, W.D. Wash. Case No. 2:12-cv-01585-RAJ (Dkt. No. 88). The District Court
17 determined that Mr. Berg had conducted a Ponzi scheme and entered judgment against Mr.
18 Kooshian in the amount of \$781,798.66, with annual interest of 12%. Mr. Kooshian appealed the
19 judgment entered against him. His appeal is currently pending before the Ninth Circuit Court of
20 Appeals under Court of Appeals Docket No. 15-35465.

21 Through December 31, 2015, the Meridian Investors Trust had distributed a total of
22 \$14,996,593 on \$154,927,252 in allowed claims. In addition to potential recoveries the
23 Liquidating Trustee may obtain from ongoing litigation and the enforcement of judgments, the
24 Meridian Investors Trust has assets consisting of its loan and vacant land parcel portfolios.
25 Because there are additional assets held by the Meridian Investors Trust that must be
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1 administered by the Liquidating Trustee, the Trustee obtained Court approval to extend the
2 duration of the Meridian Investors Trust an additional five years to 2021.

3 All claims submitted in this case have been resolved. The Liquidating Trustee further
4 believes that, as of the date hereof, all motions, contested matters, and other proceedings that
5 were before the Court with respect to this consolidated case have been resolved. As explained
6 above, the Kooshian matter, on appeal before the Ninth Circuit is the only remaining active
7 litigation matter and that matter is situated with the District Court.

8 III. AUTHORITY

9 Section 350 of the Bankruptcy Code provides, in pertinent part, that “[a]fter an estate is
10 fully administered . . . the court shall close the case.” 11 U.S.C. § 350(a). Pursuant to Bankruptcy
11 Rule 3022, the Court “on its own motion or on the motion of a party in interest, shall enter a final
12 decree closing the case.” The term “fully administered” is not defined by the Bankruptcy Code or
13 in the Bankruptcy Rules. According to the Advisory Committee Notes on the 1991 Amendments
14 to Bankruptcy Rule 3022, the case closing should not be delayed on account of plan payments
15 not being completed, and the court may consider the following factors in determining whether a
16 case has been fully administered:

17 (1) whether the order confirming the plan has become final; (2) whether deposits
18 required by the plan have been distributed; (3) whether the property proposed by
19 the plan to be transferred has been transferred; (4) whether the debtor or the
20 successor to the debtor has assume the business or management of the property
dealt with by the plan; (5) whether payments under the plan have commenced;
and (6) whether all motions, contested matters, and adversary proceedings have
been resolved.

21 *See* Advisory Committee’s Note to Fed. R. Bankr. P. 3022. Failure to satisfy all factors does not
22 preclude a determination that the case has been fully administered. *See Walnut Assocs. v. Saidel*,
23 164 B.R. 487, 493 (E.D. Pa. 1994).

24 Entry of a final decree is also appropriate where the plan has been substantially
25 consummated. *Id.* at 492; *see also In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368,

1 379 (9th Cir. BAP 2000) (stating that if plan had been substantially consummated final decree
2 should have been sought). A chapter 11 plan is substantially consummated where there is “(A) a
3 transfer of all or substantially all of the property proposed by the plan to be transferred; (B)
4 assumption by the . . . successor to the debtor under the plan of the business or management of
5 all or substantially all of the property under the plan; and (C) commencement of distribution
6 under the plan.” 11 U.S.C. § 1101(2).

7 Here, many of the factors identified in the Advisory Committee’s Note are present in this
8 case. Moreover, the Liquidating Trustee submits that the Plan has been substantially
9 consummated. In particular, according to the Plan, all assets of the Meridian Bankruptcy were
10 transferred to the Meridian Investors Trust. The Liquidating Trustee is managing the liquidation
11 of all property in the Meridian Investors Trust. Furthermore, the Liquidating Trustee has
12 commenced distributions to beneficiaries under the Liquidating Trust Agreement and such
13 distributions have totaled nearly \$15 million to date. Furthermore, all motions, contest matters,
14 and adversary proceedings have been resolved. The only exception is the pending appeal of the
15 Kooshian judgment.

16 IV. CONCLUSION

17 For the foregoing reasons, the Liquidating Trustee requests that the Court enter an order
18 closing the case and entering a final decree.

19 DATED this 31st day of August, 2016.

20 K&L GATES LLP

21 By /s/Brian T. Peterson

22 Michael J. Gearin, WSBA # 20982

23 David C. Neu, WSBA #33143

24 Brian T. Peterson, WSBA #42088

25 Attorneys for Mark Calvert, Liquidating
26 Trustee

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on August 31, 2016, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 31st day of August, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans